

FCC MAIL SECTION
Federal Communications Commission

DA 96-1228

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 94-126
Table of Allotments,) RM-8531
FM Broadcast Stations.)
(Willows, California))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 2, 1996

Released: August 9, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 9 FCC Rcd 6692 (1994), issued in response to a request filed by KIQS, Inc.¹ ("petitioner") proposing the allotment of Channel 292A to Willows, California, to provide a first local FM transmission service to that community.² Supporting comments were filed by the petitioner.³ Opposing and reply comments were filed on behalf of Royce International Broadcasting Company ("Royce"), licensee of Station KWOD(FM), Channel 293B, Sacramento, California, to which petitioner responded.^{4,5} No other comments were received.

¹KIQS, Inc. is the licensee of Station KIQS(AM), Willows, California.

²At the time this proposal was filed, a proposal was pending in MM Docket No. 94-29 to substitute Channel 288B1 for Channel 288A at Willows, and to reallocate Channel 288B1 to Dunnigan, California. See 9 FCC Rcd 1802 (1994). Although the reallocation proposal was subsequently granted, it is pending on review. See 10 FCC Rcd 11522 (1995).

³Although the petitioner's comments were dated well in advance of the initial comment deadline established herein, and were mailed from Willows, California, they were received at the Commission after the deadline. The Commission's Rules do not contemplate the acceptance of comments filed beyond the comment cycle unless specifically requested or authorized by the Commission. See Section 1.415(d) of the Commission's Rules. Neither criteria is applicable in this instance. However, inasmuch as the late-filed comments consist of the petitioner's continuing expression of interest only, and in consideration of our ultimate analysis of the opposing comments *infra*, the acceptance of petitioner's comments can be accommodated without prejudicing any other pending request. Therefore, we will consider the late-filed comments to enable us to resolve this proceeding on the basis of a complete record.

⁴Royce's reply comments merely seek dismissal of the instant proposal premised upon the petitioner's failure to respond to the Notice. However, as we have accepted the petitioner's late-filed comments on our own motion, see footnote 3, *supra*, Royce's reply comments have been rendered moot, and will not be discussed.

⁵Petitioner's responsive comments were also filed beyond the period specified therefor. However, petitioner explains that at the time Royce's opposing comments were received, torrential rains had inundated Willows, including the transmitter site of its Station KIQS(AM), and the Sacramento Valley area. Petitioner advises that as a result

2. In response to the Notice, Royce poses two objections to the proposed allotment of Channel 292A to Willows, California. Initially, Royce asserts that from the referenced site specified for Channel 292A, 70 dBu coverage over all areas within the boundaries of Willows cannot be attained. Royce claims that by the petitioner's own admission in its rule making proposal, the proposed reference site would provide a 70 dBu signal to only 91.3% of Willows, and it cites a number of cases in support to demonstrate that the Commission will not make an allotment that cannot comply with the technical requirements of our Rules.⁶ Royce believes the proposal was patently defective as filed and should have been rejected. Secondly, Royce asserts that proposed Channel 292A at Willows would cause interference to areas within Station KWOD(FM)'s normally protected 54 dBu contour, based upon the Commission's F(50,50) curves. Royce remarks that assuming the use of maximum facilities from the Willows reference coordinates, a Class A station's F(50,10) 48 dBu contour along the 135° radial toward Station KWOD(FM) extends 60.72 kilometers. Conversely, along the 315° radial toward the Willows reference coordinates, the KWOD 54 dBu contour extends 69.96 kilometers. Royce alleges that based upon the Willows reference coordinates, use of Channel 292A at Willows would overlap KWOD(FM)'s "normally protected" contour by 7.985 kilometers. As a result of the alleged interference, Royce seeks its rights under Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §316(a)(1), asserting that in essence Station KWOD(FM)'s license would be modified should the Commission allot Channel 292A at Willows, citing Western Broadcasting Co. v. FCC, ("Western"), 674 F.2d 44 (D.C. Cir. 1982).

3. In response petitioner refutes Royce's allegations. Petitioner alleges that it mailed its comments reiterating its continuing interest to the Commission well in advance of the deadline established therefor. Although it was timely served with Royce's opposing comments, petitioner remarks that due to the wide-spread flooding in the Sacramento Valley area at that time, it was unable to respond in a timely fashion as its prime consideration then was to provide essential information to area residents. Petitioner states that proposed Channel 292A at Willows is consistent with the minimum distance separation requirements of Section 73.207(b), as computed by the methods set forth in Section 73.208(c) of the Commission's Rules, and is in substantial compliance with the requirements of Section 73.315(a) as well. Accordingly, petitioner disputes Royce's allegations and urges adoption of its proposal.

of the devastation, the region was designated a Federal and State disaster area, and therefore it concentrated its efforts on remaining on the air to provide essential information to area residents. Moreover, petitioner asserts that as it responded to the Notice well in advance of the comment deadline, reaffirming its intention to apply for Channel 292A, it believes it is necessary to respond to Royce's opposition comments, due to their "basically flawed nature." We believe that petitioner has established good cause for the late-filed submission of its responsive comments, and therefore they will be considered.

⁶However, Royce based its assertions on the use of inaccurate coordinates for proposed Channel 292A. As stated in the Notice, the restricted transmitter site for Channel 292A must be located at least 14.1 kilometers (8.8 miles) southeast of the community at coordinates 39-25-56 and 122-04-50 to avoid short spacings to two area stations, as enumerated therein. Royce has incorrectly identified the proposed transmitter site for proposed Channel 292A at coordinates 39-25-56 and 122-49-38.

4. Initially, it should be noted that according to a staff engineering analysis of the proposal, petitioner's engineering exhibit (Ex. 5) depicting the degree of 70 dBu coverage over Willows from the proposed site for Channel 292A is inaccurate. According to our studies, utilizing a Sectional Aeronautical Chart of San Francisco (scale 1:500,000), we determined that from the proposed transmitter site located 14.1 kilometers (8.8 miles) southeast of the center city at coordinates 39-25-56 and 122-04-50, assuming uniform terrain, 70 dBu coverage over the entire community of Willows could be attained, since the 3.16 mV/m (70 dBu) contour of a Class A station extends 16.2 kilometers (10 miles). On the basis of our analysis, the Notice was issued. We would not, of course, entertain a request at the allotment level that would provide 70 dBu coverage to less than 100% of the requested community. As indicated above, Royce based its assertions on the use of inaccurate coordinates for proposed Channel 292A at Willows.

5. As to the potential interference allegations raised by Royce with respect to its Station KWOD(FM), Channel 293B, Sacramento, this proposal is consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. The actual distance between the authorized site of Station KWOD(FM) at coordinates 38-38-30 and 121-05-25 and the site specified for proposed Channel 292A at Willows at coordinates 39-25-56 and 122-04-50 is 122.7 kilometers (76 miles) whereas a distance of 113 kilometers (70 miles) is required between first adjacent Class A-B channels. Moreover, Section 73.209 of the Commission's Rules limits the nature and extent of interference protection to that afforded by the applicable spacing requirements.⁷ Therefore, we find that Royce's objection premised on the alleged interference to the present operation of its Station KWOD(FM), Channel 293B, by proposed Channel 292A at Willows does not require a hearing.⁸

⁷Specifically, Section 73.209 of the Commission's Rules provides that:

Permittees and licensees of FM broadcast stations are not protected from any interference which may be caused by the grant of a new station, or of authority to modify the facilities of an existing station, in accordance with the provisions of this subpart. . . The nature and extent of the protection from interference afforded FM broadcast stations operating on Channels 221-300 is limited to that which results when assignments are made in accordance with the rules in this subpart.

⁸The Court decision in *Western* is not applicable to this case. *Western* involved a facilities modification by one of two grandfathered short-spaced FM stations. These stations did not comply with the minimum separation requirements set forth in Section 73.207 of the Rules. At the time of *Western*, Section 73.213 of the Rules permitted certain prescribed facility changes by such stations. The *Fourth Report and Order* in Docket No. 14185, 40 FCC 868 (1964), adopted Section 73.213 of the Rules. Notwithstanding the fact that a particular proposal may comply with Section 73.213 of the Rules, the *Fourth Report and Order* did provide that in the few cases involving interference within a 1 mv/m contour, such cases would be resolved on a case-by-case basis. There is no such parallel provision in regard to a proposal complying with Section 73.207 of the Rules. Instead, such proposals are governed by Section 73.209(b) of the Rules which limits interference protection to the FM minimum separation requirements.

6. In view of the above, we believe the public interest would be served by allotting Channel 292A to Willows, California, since it could provide a first local FM transmission service to that community.⁹

7. As indicated in the Notice, Channel 292A can be allotted to Willows consistent with the technical requirements of the Commission's Rules, provided the transmitter is sited at least 14.1 kilometers (8.8 miles) southeast of the community at coordinates 39-25-56 and 122-04-50. The site restriction is required to avoid a short spacing to the licensed site of Station KARZ(FM), Channel 291C, Burney, California, at coordinates 40-54-21 and 121-49-38, as well as to the authorized site of Station KDIG(FM), Channel 294B, Orland, California, at coordinates 39-53-17 and 122-37-38.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 23, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Willows, California	292A

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. The window period for filing applications for Channel 292A at Willows, California, will open on September 23, 1996, and close on October 24, 1996.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 292A at Willows, California, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

⁹See footnote 2, supra.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**